

26 February 1988
OCA 88-1504

MEMORANDUM FOR THE RECORD

SUBJECT: 24 February HPSCI Hearing on H.R. 3822

1. On 24 February 1988, the Subcommittee on Legislation of the HPSCI heard testimony on H.R. 3822 from the Director, Clark Clifford, John Buchanan, Congressman Hamilton, and Dr. Allan Goodman. Present during the Director's testimony were Congressmen McHugh, Stokes, Kastenmeier, Richardson, Glickman, Livingston, Shuster, Hyde and McEwen. Accompanying the Director were Russ Bruemmer, General Counsel; John Helgerson, D/OCA; [redacted] Associate General Counsel; Bill Baker, D/PAO; [redacted] OCA; and the undersigned.

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2. The hearing began with statements from McHugh and Stokes. Copies of these opening statements are attached. Also attached is a copy of the Director's opening statement, which the Director read without any deviation from the text. During the subsequent question and answer period, the Director made the following relevant points:

The notification to the Committee [redacted] was not timely. Notification is timely if done within a reasonable period of time under the circumstances. At another point, timely was defined as "soon as you can get the Finding to the Committee, unless the President makes a decision otherwise."

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There is no physical impediment to providing the Committee notice within 48 hours of a Finding, and that is now the current practice within CIA.

The Presidential Directive on covert action will help to ensure timely notification since it requires the NSPG to review every ten days a decision to delay notification of a Finding.

The requirement to notify the Congress of a Finding within 48 hours, without exception, could possibly impede intelligence operations. A hypothetical of such a situation involves a foreign liaison service providing the Agency information on U.S. hostage location on the condition that Congress not be notified of a rescue operation until the foreign service has a chance to extract their source. A 48 hour notification requirement would make it impossible for the Agency to give such assurance.

There are not many other hypothetical situation that could be imagined that would require a delay of longer than 48 hours.

The new funding restrictions in the bill and the new definition of special activities would gravely affect the ability of CIA to perform its mission.

Foreign liaison services were initially extremely concerned about the new oversight legislation because they felt CIA would no longer be able to protect from disclosure information provided by the foreign service, or other cooperative ventures with the foreign service. This anxiety was partially relieved by amendments to bill recognizing the need to protect intelligence sources and methods.

Criminal sanctions for violation of the 48 hour notification requirement has some merit so long as individuals in the field are not prosecuted for carrying out a covert action they believed was legal and proper.

On the issue of leaks, the Director agreed that it was a problem and that the possibility of leaks grows as dissemination of the information increases.

Covert action only represents 3% of the total budget for CIA, but it receives extraordinary attention when it is not done well. Most of the covert action is an attempt to get the U.S. Government's message across. In reviewing covert action programs, the Covert Action Review Group looks at whether the program is consistent with American foreign policy and American values, and whether it would be viewed as sensible if disclosed to the American people. Under these tests, the Iranian initiative would have never gone forward.

3. In addition to the points made by the Director, the members made several important comments to the Director or to each other in the course of discussing the bill. Hyde deplored the Congressional record on keeping secrets. Hyde stated that there had been 3 major, recent leaks of classified information. Hyde also stated that one former member of the "gang of eight" was under investigation for leaking classified information related to the Pollard case and another former member of the "gang of eight" was forced to resign from the Senate Intelligence Committee because of unauthorized disclosures. McHugh stated that since Congress has the authority to deny funding for covert action, it should have the authority to require Congressional notification before covert

action funds can be spent. Hyde responded that Congress could not constitutionally infringe on the Executive's power by imposing conditions on how funds could be spent. Stokes commended the Director for disciplining those Agency employees who had lied to the Congress or violated Agency rules in the Iran/Contra affair. Richardson also praised the professional officers he met while visiting CIA.

4. Following the Director, Clark Clifford testified in favor of the bill. A copy of his testimony is attached. Clifford strongly supported the 48 hour notification requirement, and recommended that the bill be amended to automatically terminate funding for any covert action for which notification has not been given. Clifford would also impose criminal sanctions for those who knowingly violate the ban on expenditure of funds on covert actions for which the required notice is not given. Clifford stated criminal sanctions would be the only way to get officials to obey the intelligence oversight laws. Clifford stated that he has a strong disposition against covert action in general. He cited a variety of past covert actions that have ended in disaster. However, Clifford does believe covert action can sometimes be justified. An example would be the effort to support Italy from going communist in the late 1940s. Clifford also stated that foreign countries should not dictate to the U.S. on the issue of congressional notification of covert actions. Clifford believes new legislation is needed despite the good performance of Director Webster at CIA because Webster does not control other agencies and will not be on the scene forever. Clifford was against further restrictions on the use of the CIA Reserve for Contingencies. During Clifford's testimony, Congressmen Glickman and Kastenmeier expressed support for imposing criminal penalties for violation of the Intelligence Oversight Act.


5. John Buchanan of the "People for the American Way" testified next on the bill. Attached is a copy of his opening statement. Nothing significant was said during the question and answer period.

6. Congressman Hamilton testified in the afternoon session on the bill. Attached is a copy of his opening statement. Hamilton commended the President for issuing the Presidential Directive on covert action approval and notification. However, he stated future Presidents were not bound by the Directive, and that it was necessary that these future President's be bound to notify the Intelligence Committees of Findings within 48 hours. Hamilton noted that if hundreds of people in the Executive branch and a variety of foreign officials could be informed of covert actions, then at least the leadership of the

Congress should be so informed. Hamilton also stated that he was not familiar with the issues raised in the Director's testimony other than the issue regarding the 48 hour notification requirement. Hamilton refused to support criminal sanctions for violation of the Intelligence Oversight Act as a means to force compliance with the law. Hamilton believed that just a clear statement of the law would lead to compliance. Congressmen Stokes characterized the Director's testimony in a question to Hamilton as "excellent."

7. Allan Goodman was the last to testify. Attached is a copy of Mr. Goodman's testimony. Mr. Goodman was an analyst in the Agency for several years. Mr. Goodman stated intelligence officers involved in covert actions operations would want assurances that Congress has been informed of the activity and that the activity is consistent with applicable law. These officers understand, according to Goodman, that careers can be ruined and morale destroyed by covert actions for which no notification has been given. They therefore would support this type of bill. Goodman also stated that prior notice will not inhibit cooperation with foreign intelligence services. Goodman believes that Congress has a good record in protecting intelligence secrets. Goodman admitted during questioning that he opposes all covert actions, and would like to see legislation outlawing covert action. Congressman McHugh in a statement to Goodman stated that the issues raised in the Director's testimony other than the 48 hours could all be worked out by staff.

8. Congressman McHugh stated that there would be further hearings on the bill on 10 March.


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